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No. 851

IN THE

Supreme Court of the United States

October Term, 1960

YELLOWSTONE PIPE LINE COMPANY,

Petitioner,

vs.

THE STATE BOARD OF EQUALIZATION OF THE STATE OF MONTANA; DAN FULTON, E. J. BYRNE and JOHN C. ALLEN, members of and constituting The State Board of Equalization of the State of Montana; YELLOWSTONE COUNTY, MONTANA, a political subdivision of the State of Montana; MARJORY C. THOMPSON as Treasurer of the said Yellowstone County, Montana and T. A. COTHRON as Assessor of said Yellowstone County, Montana,

Respondents.

OIL BASIN PIPELINE COMPANY,

Petitioner,

vs.

THE STATE BOARD OF EQUALIZATION OF THE STATE OF MONTANA; DAN FULTON, E. J. BYRNE and JOHN C. ALLEN, members of and constituting The State Board of Equalization of the State of Montana; YELLOWSTONE COUNTY, MONTANA, a political subdivision of the State of Montana; MARJORY C. THOMPSON as Treasurer of the said Yellowstone County, Montana and T. A. COTHRON as Assessor of said Yellowstone County, Montana,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

Petitioners pray that a Writ of Certiorari issue to review the Judgment of the Supreme Court of the State of Montana entered in the above causes on December 30, 1960 (Appendix, p. 43) reversing and setting aside judgments of the District Court, Thirteenth Judicial District of the State of Montana in and for the County of Yellowstone (Appendix, pp. 45, 47) and ordering the causes remanded to the District Court with instructions to make and enter judgments in favor of the respondents and against

each of the petitioners consistent with the views expressed in the Montana Supreme Court opinion.

OPINIONS BELOW

The opinions of the Supreme Court of Montana are unofficially reported in 358 P. 2d 55 (February 3, 1961 Advance Opinions) but have not as yet been officially reported in the Montana State Reports. These opinions are shown commencing at Page 1 of the Appendix. The District Court prepared no separate opinion but entered certain Findings of Fact and Conclusions of Law (R. 79-100, 179-199).

JURISDICTION

After the initial decision of the Montana Supreme Court on July 26, 1960, an Order granting a rehearing was entered on September 28, 1960, and after oral argument pursuant to such Order, final judgment was entered on December 30, 1960 (Appendix, p. 43). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3). The court below decided against petitioners' contention that the assessment of their pipe line properties was discriminatory in violation of the equal protection of the laws clause of the Fourteenth Amendment of the United States Constitution. Such decision of the Montana Court involved a federal question of substance and was not in accord with applicable decisions of this Court.

QUESTIONS PRESENTED

While most property in Montana is assessed for ad valorem tax purposes by the county assessors, property constituting single and continuous property throughout more than one county is assessed by the State Board of Equalization (herein sometimes called "the Board"). The Board apportions each assessment made by it to each county in which the assessed property is situated on a mileage basis and the county assessor then enters such assessment on his

assessment rolls. (Revised Codes of Montana, 1947, Sections 84-901 through 84-907.) While it is provided by statute that all taxable property must be assessed at its full cash value (Revised Codes of Montana, 1947, Section 84-401), real property (which comprises the bulk of property subject to ad valorem taxes) in Yellowstone County and elsewhere in Montana has, over the years, been intentionally and systematically assessed by the local assessors at less than 35% of full cash value. The Board of Equalization in making its assessments, however, does not adhere to this practice of the local assessors, although it is fully aware of such practice. Moreover, the Board does not apply any uniform percentage to properties that it assesses but treats each taxpayer's property on an individual basis, applying a different percentage in each case, the percentage applied being determined by the Board in its discretion without the application of any uniform standards. The percentages applied by the Board are, however, in all cases higher than the figure applicable to locally assessed property. The Board in going through this assessing process does not purport to treat property that it assesses differently than real property on the grounds that such property is of a different class but on the contrary laments the existence of this bad assessment picture.

After property has been so assessed, the Board then classifies the property in accordance with the classification statute (Revised Codes of Montana, 1947, Sections 84-301, 84-302) and the taxes on such property are then computed accordingly (R. 91, 92, 190, 191; Revised Codes of Montana, 1947, Section 84-402). This classification statute sets forth seven different classes of property and the percentage to be applied to property in each class to arrive at its taxable value, such percentage being different for each class of property. This statute has been held constitutional in the case of *Hilger v. Moore*, 56 Mont. 146, 182 P. 477 (1919), on the theory that it comprises a proper classification of properties providing for the relative burden of ad

valorem taxes which should be borne by each different class of property within the state.

The Supreme Court of Montana held that the assessment of each of the petitioners' properties involved no violation of the Fourteenth Amendment of the United States Constitution because the assessing process as carried out by the Board reflected merely a different treatment of a different class of property within the authority of *Nashville, Chattanooga & St. Louis Railway v. Browning*, 310 U.S. 362.

While the basic federal question here involved is the violation of the equal protection of the laws clause of the Fourteenth Amendment, this question is, in the interests of clarity in presentation, divided into two parts as follows:

(1) whether various statutes and constitutional provisions of Montana have been administered in such a manner as to deprive the petitioners of equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution;

(2) whether the assessment of petitioners' pipe line properties was discriminatory as against petitioners in violation of the equal protection of the laws clause of the Fourteenth Amendment.

STATUTORY PROVISIONS INVOLVED[1]

The statutes involved in this case, some of which are lengthy, are set forth verbatim commencing on Page 50 of the Appendix. The citation of these statutes and a brief explanation thereof follows:

(a) Section 84-901 through Section 84-907 (Repl. Vol. 5, Revised Codes of Montana, 1947, Pages 533-536); provide that the State Board of Equal-

[1]In addition to the above enumerated statutes, there are certain provisions of the Montana Constitution and certain additional Montana statutes, which, although not directly involved in the constitutional question here presented.

ization shall make the original assessment of intercounty property and set forth the procedures and manner in which such assessments shall be accomplished.

(b) Section 84-401 (Repl. Vol. 5, Revised Codes of Montana, 1947, Page 489), prescribes that all property shall be assessed at "full cash value".

(c) Section 84-301 (Repl. Vol. 5, Revised Codes of Montana, 1947 (1959 Cumulative Pocket Supplement), Pages 51-52), is the Montana classification statute.

(d) Section 84-302 (Repl. Vol. 5, Revised Codes of Montana, 1947, Page 485), specifies the percentage of true and full value of property in each class, which shall be taken as a basis for the imposition of taxes.

STATEMENT

These are companion cases separately brought by each of the petitioners in January, 1956, to recover 1955 ad valorem taxes on pipe line properties paid under protest to the county treasurer for Yellowstone County, Montana, in November, 1955. The pipe line properties of each

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provide certain background material which may be of assistance to the Court in considering this case. These are:

Article XII, Section 1, Montana Constitution (Repl. Vol. 1 (Part 1), Revised Codes of Montana, 1947, Page 233), requiring the legislative assembly to prescribe regulations to secure a just valuation for taxation of all property;

Article XII, Section 11, Montana Constitution (Repl. Vol. 1 (Part 1), Revised Codes of Montana, 1947, Page 253), requiring that taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax;

Section 84-708 (Repl. Vol. 5, Revised Codes of Montana, 1947, Pages 521-522), outlining the statutory duties of the State Board of Equalization;

Section 84-402 and 84-404 (Repl. Vol. 5, Revised Codes of Montana, 1947, Pages 489 and 490), requiring the county assessors and the Board, respectively, to determine the percentage basis to be assigned to property under the classification statute;

Section 84-721 (Repl. Vol. 5, Revised Codes of Montana, 1947, Page 529), providing for the manner in which each county shall enter on its county assessment book the assessment made by the State Board of Equalization on intercounty property.

petitioner, having constituted a single and continuous property throughout more than one county, were in the first instance assessed by the State Board of Equalization and the assessment so arrived at was transmitted to the county assessors for entry on the assessment rolls. The complaint in each case alleged, among other things, that the assessment so made by the Board deprived the petitioners of due process of law and denied petitioners the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States (R. 8, 117).

At the trial the following facts were established:

The Board, after arriving at a full cash value of each of petitioners pipe line properties in Montana in accordance with the Revised Codes of Montana, 1947, Sections 84-901 through 84-907 (Appendix, pp. 52-55), determined the assessed value for such properties by taking a percentage in each case of the full cash value, the percentage used in the case of the properties of the Yellowstone Pipe Line Company being 74.02% and that in the case of Oil Basin Pipe Line Company being 76% (R. 87, 186). At the time that the Board was so assessing each of petitioners pipe line properties, (1) the Board well knew that real estate in Yellowstone County, Montana, and throughout all of the State of Montana was intentionally and systematically assessed by the respective county assessors at far less than the full and true value thereof, the state-wide average being 30.55% and the average for Yellowstone County being 31.5% of full cash value (R. 88, 187), and (2) the Board was recommending to county assessors that various properties, such as motor vehicles, oil field equipment, supplies, livestock, lumber, neon signs, and so forth, be assessed at various percentages of full cash value ranging from 50% to 70% (R. 89, 187, 188), and (3) the Board was assessing the pipe line properties of Montana Dakota Utilities and Interstate Pipe Line Company, the only other two intercounty pipe lines situate within Yellowstone County, at 68.26% of full cash value for Montana Dakota Utilities.

and 62.55% of full cash value for Interstate (R. 89-91, 188, 189). In applying the foregoing percentages to arrive at the assessed value of petitioners' pipe line properties, the Board did not purport to be treating them differently from real estate generally on the grounds that such properties were of a different class but was torn between the consideration that it felt it should give to Section 84-401, Revised Codes of Montana, 1947 (Appendix, p. 52), which requires that all property be assessed at full cash value, and its knowledge that this statute was not being observed by the county assessors and its further knowledge that real estate was being assessed, in fact, at far less than full cash value. The individual percentages applied by the Board in arriving at the assessed values were applied in a vague effort to compromise this situation (R. 262, 263). This discriminatory situation was a continuing one and there is nothing in the record to show that it was ever corrected, but, on the contrary, it is evident from the record that at the time of the trial in 1958, little had been accomplished in the direction of correcting such situation (R. 263).

After trial, the District Court concluded that the assessment of each of petitioners pipe line properties denied petitioners equal protection of the laws in violation of the Fourteenth Amendment of the Constitution of the United States (R. 98, 99, 198) and entered judgment for each of the petitioners for a portion of the tax paid under protest (R. 103, 200).

On appeal by the Board to the Supreme Court of Montana[2], petitioners each argued in support of the District Court's conclusion of law on the constitutional question. The Supreme Court of Montana, after the initial briefs and arguments, reversed the judgment of the District Court and filed a majority opinion by Chief Justice Harrison, with a dissenting opinion by Justice Adair. The majority opinion held against petitioners on the question of a

[2]Petitioners also filed a cross appeal on the grounds that the relief granted by the District Court was not as much as they were entitled to for various reasons as set forth in their cross appeals, respectively (R. 787, 789).

violation of the Fourteenth Amendment of the United States Constitution. The dissenting opinion held that such constitutional amendment had been violated. Thereupon, the petitioners filed a petition for rehearing, again alleging that the assessment of each of their pipe line properties and the administration of certain statutes and constitutional provisions of Montana were in violation of the Fourteenth Amendment of the United States Constitution. Oral argument was had on rehearing on October 20, 1960, and the opinions and judgments heretofore referred to were handed down on December 30, 1960.

The majority opinion of Chief Justice Harrison, concurred in by Justices Castles and Angstman and District Judge Loble (sitting in place of Justice Bottomly), again held that there had been no violation of the Fourteenth Amendment of the United States Constitution, and Justice Adair again expressed the view that there was such a violation. The court ordered the earlier opinions and judgments withdrawn and that the opinions filed December 30, 1960, be substituted therefor and entered final judgment reversing the District Court and remanding the cases to the District Court with instructions to make and enter judgments in favor of appellant and against each respondent consistent with the views expressed in such opinion.

The decision below thus necessarily rests upon the determination of a federal question by a majority of the court. This was an essential ground for the decision of the majority. A summary showing the way in which the federal question sought to be reviewed was raised and passed upon is shown in the Appendix, pp. 56, 57. The federal question is thus properly presented for consideration by this Court.

REASONS FOR GRANTING THE WRIT

The Montana Supreme Court in its holding in these cases has applied the holding of this Court in *Nashville, Chattanooga & St. Louis Railway v. Browning*, 310 U.S.

362, to a situation not passed upon in that case and has failed to take cognizance of numerous decisions of this Court, which, in passing upon situations more or less similar to that presented in this case, have held the Fourteenth Amendment violated. The importance of the questions here presented is evident from the fact that under the holding of the Montana Court individual taxpayers may be discriminated against by assessing officials with impunity.

I.

The situation in the *Browning* case, which came before this Court on writ of certiorari to the Supreme Court of Tennessee, differs from the situation here presented to this Court in two respects. First, in Tennessee there was no statute classifying property for ad valorem tax purposes as is the case in Montana. Second, the Railroad and Public Utilities Commission, which was the assessing board in that case, followed a practice and had followed a practice for many years of assessing railroad properties at 100% of actual full cash value in contrast to the individual treatment accorded to the several pipe line companies which the State Board of Equalization assessed in the case here presented. These are significant differences.

In Montana the classification statute (Appendix, p. 50) establishes the classification of property and specifies the percentages to be applied in arriving at assessed values for property in each class. The very purpose of this statute was to establish the relative tax burdens to be borne by property in each class. In *Hilger v. Moore*, 56 Mont. 146, 182 P. 477 (1919), the Montana Court commented on this statute as follows at page 173 of the Montana Reports:

> "In theory, the doctrine of classification seeks to remove the temptation to dishonesty in returning property for assessment; to shift the burden of taxes from property, as such, to productivity, or, in other words, to impose the burdens of government upon property in proportion to its use, its productivity, its utility, its

> general setting in the economic organization of society, so that everyone will be called upon to contribute according to his ability to bear the burdens, or as nearly so as may be, and to relieve administrative officers from the apparent necessity of continuing the legal fiction of full valuation in the face of contrary facts. Whether in practice it will realize the hopes of its advocates, experience alone will demonstrate."

In the more recent case of *Yellowstone Bank v. State Board of Equalization*, ... Mont. ....., 351 P. 2d 904 (1960), the Supreme Court of Montana emphasized that the establishing of a formula for the determination of the basis for the imposition of taxes on each class of property is the sole prerogative of the Legislature, saying at Page 908 of the Pacific Reporter:

> "* * * The Legislature may devise its own formula to determine the basis for the imposition of taxes on the property in question, namely, bank shares and 'moneyed capital'. This court has said, 'The whole matter is left to the discretion of the legislative power, and there is nothing to forbid the classification of property for the purposes of taxation and the valuation of different classes by different methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances.' Hilger v. Moore, 56 Mont. 146, 172, 182 P. 477, 483."

From this it logically follows that any further classification or application of different or additional percentages in the assessing process is inconsistent with the statute. The holding in the *Browning* case rested upon the fact that what the Commission did there amounted to a settled practice. It is fair to assume that here the statute reflects the settled state law. How can anything incon-

sistent with it help but fall short of achieving the dignity of a settled practice which amounts to state law?

This point was argued vigorously before the Montana Court on rehearing. The Montana Court in its opinion, however, advanced the view that notwithstanding the classification statute, the Board, under Section 15 of Article XII of the Montana Constitution, which says, "the state board of equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers", has the power by implication to determine just what property belongs in the same class. This interpretation appears to permit the classification of property by the Board without regard to inconsistencies between the Board's action and the classification statute and, under the facts of this case, without regard to principles of uniformity among individual taxpayers.

But even if we accept the view of the Montana Supreme Court that the Board can properly set up classifications of property inconsistent with the classification statute, there remains the question of whether the Board actually did this. The record in this case is conclusive that it did not. It did not purport to establish any separate class for pipe lines. It treated each pipe line property differently, thereby precluding any inference that by uniform treatment of pipe line properties it was by implication setting them up as a separate class. As a matter of fact, it classified petitioners' properties in Class 7 of the classification statute (R. 35), thereby accepting the statute as prescribing the class into which such properties fall and the relative percentages of true and full value to be applied in arriving at the taxable value of property in each class.

But then the Board went ahead and assigned a percentage in making its assessment of petitioners' pipe line properties, which caused petitioners' relative share of the

tax burden to be three times that of real property generally instead of one-third greater as is prescribed by the statute. This can be readily demonstrated as follows. Assuming certain pipe line properties have a full cash value of $10,000 and certain real estate in the same county has a full cash value of $10,000, the taxable value of the pipe line properties applying the classification statute is $4,000 and that of the real property is $3,000. But if the pipe line properties are first assessed at 75% of full cash value (to take a round figure) the ultimate taxable value is 75% x $10,000 x 40%, or $3,000, while the real property, if is is assessed at 31.5% as was the case in Yellowstone County, ends up with a taxable value of 31.5% x $10,000 x 30%, or $945. The position of petitioners, whose pipe line properties were assessed at 74.02% and 76% of full and true value, is obvious.

In so administering the statutes of Montana, the Board has discriminated against petitioners in violation of the Fourteenth Amendment[3]. This Court has held in a number of cases that a statute otherwise constitutional may be administered in such a manner as to violate the Fourteenth Amendment. *Concordia Fire Insurance Co. v. Illinois*, 292 U.S. 535; *Hanover Fire Insurance Co. v. Carr*, 272 U.S. 494; *St. Louis SWR Company v. Arkansas ex rel Norwood*, 235 U.S. 50; *Corn Products Refining Company v. Eddy*, 249 U.S. 427.

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[3]In a number of cases where the question involved was the proper procedure for bringing a case before this Court, it has been held that a proper judgment of a state court sustaining a tax assessment alleged to be illegal because of discrimination can be reviewed only on certiorari. *Ex parte Williams* 277 U.S. 267 (1928). And, in one case where the matter was brought before this Court on appeal, the appeal was treated as a petition for a writ of certiorari. *Charleston Federal Savings and Loan Association v. Alderson*, 324 U.S. 182 (1945). The implication from these cases is that ad valorem tax cases do not involve a question of the constitutionality of a statute. Notwithstanding these authorities, we think that this case does involve a question of the proper administration of certain statutes in Montana and it is petitioners' contention that these statutes have been administered in violation of the Fourteenth Amendment. These statutes are (1) Revised Codes of Montana, 1947, Section 84-401 (Appendix, p. 52), requiring that all property be assessed at full cash value, (2) Revised Codes of Montana, 1947, Section 84-901 through 84-907 (Appendix, pp. 52-55), authorizing the State Board of Equalization to assess property constituting a

Perhaps the argument might be advanced that such a situation, as bad as it is, involves only a matter of concern to the state, and, if the Montana Court finds nothing wrong, that is the end of the matter. If the Board here, in departing from the classification statute, had been uniform in its discrimination against Class 7 properties, or even pipe line properties, such an argument might merit some comment. But such is not the case. The individual treatment of taxpayers shown here cannot come within the shelter of settled state practice recognized in the *Browning* case. This is crystal clear in the testimony of E. J. Byrne, a member of the Board, where he says in substance that the Board knew that its assessments were not consistent with those of local assessors, which the Board felt was wrong, but that is an area in the assessing process where the board is unsure of its footing (R. 262, 263).

Finally, the holding of the Montana Supreme Court in these cases, insofar as it upholds the assigning, on an individual basis, of a higher percentage of value to petitioners' property than that generally prevailing in Yellowstone County, is not in accord with numerous decisions of this Court, one of which is here cited: *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441.

In a later case, similar discrimination on an individual

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single and continuous property throughout more than one county, and (3) Revised Codes of Montana, 1947, Sections 84-301 and 84-302 (Appendix, p.), establishing the classification of property and assigning the percentage of true and full value to be applied to property in each class. Had these statutes been followed by the assessing officials in Montana, there would be no question of discrimination in this case. What the Board did here was indirectly to cause and bring about a wrongful and discriminatory administration of the classification statute, which, as applied to these petitioners, resulted in an administration of this statute in violation of the Fourteenth Amendment. Also, in connection with Revised Codes of Montana, 1947, Section 84-401, requiring that all property be assessed at full cash value; the Court's attention is called to the case of *Greene v. Louisville & Interurban R. Co.*, 244 U.S. 499; *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, and the enlightening A.L.R. notes on this subject—3 A.L.R. 1370, 28 A.L.R. 983, 55 A.L.R. 503—which say that such a statute must give way to requirements of uniformity in taxation where it appears that property is assessed at some percentage of full cash value rather than at full cash value as required by the statute, and that where this situation occurs, an individual taxpayer whose property is assessed at a higher percentage is entitled to have his assessment reduced to conform to the prevailing practice.

basis against a member of a class was condemned. *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23.

The Montana Court admits this discrimination but seeks to justify it by showing that the Board was motivated by good intentions. In the *Cumberland* case, however, this Court said:

> "There is no question that the assessments under review were made pursuant to a deliberately adopted system. The case is not one of mere errors in judgment in following a proper method (Sunday "Lake Iron Co. v. Wakefield Twp. 247 U. S. 350, 352, 353, 62 L. ed. 1154-1156, 38 S. Ct. 495; Southern R. Co. v. Watts, 260 U. S. 519, 526, 67 L. ed. 375, 387, 43 S. Ct. 192), but one where the challenged discrimination resulted from a plan of assessment which was none the less systematic and intentional because of belief in its validity. Raymond v. Chicago Union Traction Co., 207 U. S. 20, 35, 37, 52 L. ed 78, 87, 88, 28 S. Ct. 7, 12 Ann. Cas. 757; Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, 445, 67 L. ed. 340, 342, 28 A.L.R. 979, 43 S. Ct. 190; Chicago G. W. R. Co. v. Kendall, 266 U. S. 94, 98, 99, 69 L. ed 183, 188, 189, 45 S. Ct. 55." (Page 25 of 284 U.S.)

Moreover, the Montana Court is in error in seeking to justify this situation on the basis that taxing officials cannot be expected to achieve perfect uniformity in taxation. Such an observation may be true with respect to determining the full and true value of each individual taxpayer's property because value is a matter of opinion, but it obviously is not true when applied to the assessing procedure of the Board as presented in this case because the Board could easily have applied exactly the same percentage to each taxpayer's property after the Board had determined its full and true value. By assigning percentages on an individual basis, the Board followed a fundamentally wrong and unconstitutional method of assessment.

II

The decision of the Montana Supreme Court upholds the practice of the Board of assigning, on an individual basis, the percentage of full and true value to be applied to each taxpayer's property for assessment purposes. Carrying this decision to its logical conclusion, if the Board can do this, each county assessor can do the same, and there is no limit upon the discrimination which might be practiced against an individual taxpayer. This is a departure from anything that has been upheld by this Court and is a violation of the equal protection clause of the Fourteenth Amendment. Under the decision of the Montana Court, the whole structure of the Montana ad valorem taxation system remains in a chaotic condition.

Moreover, the decision of the Supreme Court of Montana lays down no legal principles for the Board to follow in determining the percentage of true and full value to be applied in the assessing process.

If such decision is allowed to stand, taxpayers in Montana will be exposed to having their properties assessed on an individual basis at varying percentages of full cash value with no possibility of relief.

Thus, the importance of the question here presented is self-evident.

CONCLUSION

The singling out of the pipe line properties of each of the petitioners for discriminatory treatment on an individual basis by the Board was a violation of the Fourteenth Amendment under many decisions of this Court. The record in this case also shows that the Board in administering various tax statutes in Montana administered them in such a manner as to deny petitioners equal protection of the laws required by the Fourteenth Amendment. Finally, the opinion of the Montana Supreme Court reflects an erroneous application by that court of the *Browning* case. In view

of the clear violation of the Fourteenth Amendment shown in this case and the simplicity of the problem involved, and in view of the further fact that the Judgment of the District Court was consistent with the legal principles laid down by this Court in numerous decisions, we respectfully submit that the petition for a writ of certiorari should be granted and the Judgment of the Supreme Court of Montana should be forthwith reversed with instructions for such further proceedings as may be necessary, consistent with the Judgment of the District Court (Appendix, pp. 45-49).

Respectfully submitted,

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